

RECEIVED
CENTRAL FAX CENTER

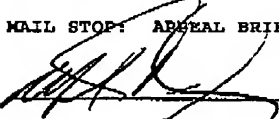
JUL 17 2006

Docket No.: A-3878

CERTIFICATION OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

MAIL STOP: APPEAL BRIEF-PATENTS

July 17, 2006
DateIN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Applic. No. : 10/766,593 Confirmation No.: 3879
Inventor : Berthold Berens, et al.
Filed : January 28, 2004
Title : Punching and Scoring Backing Plate, Method
for Producing the Backing Plate, Machine
Equipped with the Backing Plate and Method
for Punching and Scoring with the Backing
Plate
TC/A.U. : 3724
Examiner : Phong H. Nguyen
Customer No. : 24131

Hon. Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF

S i r :

In response to the Examiner's Answer dated May 18, 2006,
kindly consider the following remarks:

Application No. 10/766,593
Brief on Appeal, dated 7/17/06

RECEIVED
CENTRAL FAX CENTER
JUL 17 2008

Remarks:

On page 2 of the Examiner's Answer, the Examiner stated that "firstly, it should be noted that Appellant does not claim any specific shape for the backing plate." Appellants comment as follows. As stated in the Appeal Brief, appellants do not use the argument of a difference in shape as a limitation that is patentable. Instead, appellants merely argued that due the difference in the shapes of Sinn's plate and the plate of the instant application the residual thickness of the scoring groove being greater than at least 0.1 mm, is not of routine skill in the art.

The Examiner's allegation on page 4 of the Examiner's Answer that "the backing plate of Sinn can be used in both a flatbed punching and scoring machine and a rotary punching and scoring machine. See col. 1, lines 10-15", are not accurate. More specifically, the disclosure in lines 10-15 in column 1 of Sinn pertains to the description of related art. In column 2, lines 10-14, Sinn discloses "a punching and scoring tool, on which scoring and punching means, which can be moved in a lifting movement in relation to a counter-punching plate for formation of scores in the material sheet and for punching the material sheet...". Because Sinn discloses a "lifting movement" of the punching plate in relation to the counter

Application No. 10/766,593
Brief on Appeal, dated 7/17/06

punching plate, the use of a rotary punching machine is precluded. Moreover, Sinn discloses a specific relationship between the punch blades (2a and 2b) and the scoring projections (10a and 10b) during the scoring of the cardboard (column 4, line 50 to column 5, line 2). Sinn even provides time travel diagram in Fig. 3, which explicitly show the specific relationship between the punch blades and the scoring projections. A rotary punch would not be able to maintain the relationship between the punch blades and the scoring projections. As seen from the above-given comments, the punching tool of Sinn cannot be used in a rotary punching and scoring machine. Accordingly, the Examiner's allegation that backing plate of Sinn can be used in a rotary punching machine, is not correct. Therefore, it is respectfully requested that the honorable board disregard the Examiner's comments pertaining to the use of the backing plate of Sinn in a rotary punching machine.

Furthermore, on page 4 of the Office action, the Examiner makes the allegation that "Sinn teaches the residual thickness of the score groove is at least 0.3mm." The Examiner bases this conclusion on a dimension "A" that is provided Fig. 1 of Sinn, which he reproduces on page 5 of the Examiner's action. The dimension "A" is not directed to the residual thickness of the score groove. Moreover, MPEP § 2125 states that:

Application No. 10/766,593
Brief on Appeal, dated 7/17/06

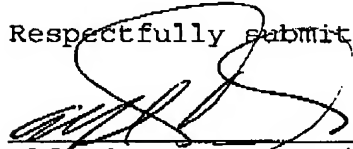
Proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000).

Sinn does not disclose that the drawings are to scale. Accordingly, it is believed that the Examiner's allegation, based on Fig. 1 of Sinn, is not correct. Therefore, it is respectfully requested that the honorable board disregard the Examiner's comments pertaining to the thickness of the score residual of Sinn.

Application No. 10/766,593
Brief on Appeal, dated 7/17/06

Based on the above given remarks, the honorable Board is
therefore respectfully urged to reverse the final rejection of
the Primary Examiner.

Respectfully submitted,



Alfred K. Dassler (52,794)

Date: July 17, 2006
Lerner Greenberg Stemmer LLP
Post Office Box 2480
Hollywood, Florida 33022-2480
Tel: (954) 925-1100
Fax: (954) 925-1101